IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8748 OF 2004

Jyotirling Cooperative Lift
Irrigation Society .. Petitioner
Versus
National Bank for Agriculture
and Rural Development & Ors. .. Respondents

WITH

WRIT PETITION NO.8749 OF 2004

Koteshwar Coop.Lift Irrigation
Society Ltd. .. Petitioner
Versus
National Bank for Agriculture
& Rural Development & Ors. .. Respondents

WITH

WRIT PETITION NO.8752 OF 2004

Krishnai Coop.Lift
Irrigation Society .. Petitioner
Versus
National Bank for Agriculture
& Rural Development & Ors. .. Respondents

WITH

WRIT PETITION NO.8753 OF 2004

Sangam Cooperative Lift
& Irrigation Society ..Petitioner
Versus
National Bank for Agriculture
& Rural Development & Ors. .. Respondents

WITH

WRIT PETITION NO.8754 OF 2004

Shri Umeshwar Cooperative Lift

Irrigation Society Ltd. .. Petitioner
Versus
National Bank for Agriculture
& Rural Development & Ors. .. Respondents

WITH

Jyotirling Cooperative Lift
Irrigation Society, .. Petitioner
Versus
National Bank for Agriculture
& Rural Development & Ors. .. Respondents

WITH

WRIT PETITION NO.8756 OF 2004

Shriram Cooperative Lift Irrigation
Society ..Petitioner
Versus
National Bank for Agriculture
& Rural Development & Ors. .. Respondents

WITH

WRIT PETITION NO.8757 OF 2004

Chandrasen Cooperative Lift
Irrigation Society .. Petitioner
Versus
National Bank for Agriculture
& Rural Development & Ors. .. Respondents

Mr.Shekhar Naphade with Y.R.Mehta for petitioners
Mr.Y.D.Mulani, A.G.P. for respondent Nos. 2 and 5
Mr.Vijay Patil for respondent No.3

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
**DATE : 1st DECEMBER 2004.**

P.C.

. Heard Mr.Naphade, learned Senior Counsel appearing for petitioners, Mr.Mulani, learned Counsel appearing for respondent Nos. 2 and 5

and Mr.Patil, learned Counsel appearing for respondent No.3.

2. These petitions pray for issuance of writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing National Bank for Agriculture & Rural Development (NABARD) and Reserve Bank of India (RBI), to enforce their circulars/ directives dated 16th March 1985, 27th May 1987 and 12th December 1997. These circulars are annexed as Annexures A, D, E and F. A further direction is sought to decide the claims of petitioners against respondent No.3 in accordance with these circulars/ directives.

3. At the outset, Mr.Patil, learned Counsel appearing for respondent No.3 raises a preliminary objection to the maintainability of these petitions. It is contended by him that petitioners had availed of loans and credit facilities. Admittedly, this is pursuant to agreements between them as well as respondent No.3. He submits that the default in payment of loans entitled respondent No.3 to take such steps as are permissible in law to enforce the

contractual obligations. He submits that pursuant to such steps amounts have been recovered and if this court were to entertain these petitions, it will amount to reopening the matters insofar as payment of interest. He submits that directions to make payment/refund is being sought, but such claim is disputed seriously by respondent No.3. That apart, he contends that loans have been restructured in accordance with the request of petitioners themselves. It is not open for them to now agitate the issue of payment of interest. He submits that this Court will have to hold a full fledged trial whih is not permissible in its jurisdiction under Article 226 of the Constitution of India. The claims are seriously disputed apart from being barred by limitation.

4. Mr.Naphade, on the other hand contends that petitioners had already approached this Court with a request that NABARD as well as RBI should decide the representations of petitioners within a period of three months. That writ petition was disposed of on 18th February 2002 (W.P.909 of 2002). He submits that pursuan to

the order passed by this Court, respondent No.1 NABARD directed respondent No.3 to undertake exercise of recalculating the interest as a result of capitalisation and to refund the excess interest charged. This Court had also issued directions to R.B.I. to decide petitioners' representation but till date no action has been taken by RBI. On the other hand, RBI addressed a letter to petitioners mentioning that NABARD had already decided the representations and it has advised NABARD vide its letter dated 21st August 2002 to intimate to it the action taken by Satara District Central Cooperative Bank (Respondent No.3). He submits that petitioners addressed a letter and pointed out to RBI that respodent No.3 should charge interest at 12% instead of 10%. There is correspondence on this issue. But the stand of RBI appears to be that the rate of interest charged by respondent Bank was correct. Mr.Naphade submits that attention of the authorities were invited to their circulars in personal meeting. Thereafter, RBI informed petitioners that their claim for re-calculation of interest was under consideration of its central office and it would revert shortly.

However, beyond directing NABARD to take immediate action as regards rate of interest charged by respondent No.3, nothing has been done in the matter. He, therefore, submits that the only remedy of petitioners is to seek a writ of mandamus in the aforesaid terms.

5. Mr.Naphade submits that there is no dispute and it cannot be said that any contractual claims or factual issues are being agitated by petitioners. The case is of applicability of circulars in the light of their clear wording. Therefore, these petitions can be entertained by this Court.

6. After hearing parties, we are of the view that the claim of interest arising out of a contract of loan between petitioners and respondent No.3 cannot be agitated by us in the absence of proper materials which would be placed after oral and documentary evidence. This is not a case where the claims are being denied just for the sake of raising a dispute. On the other hand, there are serious questions about reopening of interest calculations by respondent No.3.

Assuming that applicability of circulars to the transactions in question would enable petitioners to apply for re-calculation, in our view, there being serious dispute about the entitlement, after the transactions are concluded, it will not be proper for us to entertain these petitions. The claim for refund of excess interest raised by the petitioners cannot be made subject matter of writ petition. Petitioners are seeking adjudication of contractual disputes through these petitions and merely impleading NABARD and RBI will not be sufficient. Ultimately, refund has to be claimed from respondent No.3 which is a Cooperative Bank. The transactions between petitioners and respondent No.3 are not capable of being adjudicated in writ jurisdiction. Further, it is doubtful whether writ could be issued to respondent No.3.

7. In the light of the aforesaid, the remedy of petitioner is either to file a suit or such other proceedings as are permissible in law for enforcing their claims pertaining to refund of excess interest. Leaving all these remedies open, we dismiss these petitions with no order as

to costs.

8. We clarify that no opinion is expressed by us on the merits of the matter and all contentions in that behalf are expressly kept open.

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